

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2792

Introduced by Assembly Member Bonta

February 19, 2016

An act to ~~amend Section 7282 of~~ *add Chapter 17.2 (commencing with Section 7283) to Division 7 of Title 1 of the Government Code,* relating to ~~state~~ *local* government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2792, as amended, Bonta. ~~Federal–Local law enforcement agencies:~~ *federal* immigration policy enforcement.

Existing federal law authorizes issuance of an immigration detainer that serves to advise another law enforcement agency that the federal department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. Existing federal law provides that the detainer is a request that the agency advise the department, prior to release of the alien, in order for the department to arrange to assume custody in situations when gaining immediate physical custody is either impracticable or impossible.

Existing ~~law~~ *law, commonly known as the TRUST Act*, prohibits a law enforcement official, as defined, from detaining an individual on the basis of a United States Immigration and Customs Enforcement hold after that individual becomes eligible for release from custody, unless, at the time that the individual becomes eligible for release from custody, certain conditions are met, including, among other things, that the individual has been convicted of specified crimes. Existing law defines specified terms for purposes of these provisions.

This bill would authorize a local law enforcement agency to participate in a federal Immigration and Customs Enforcement (ICE) immigration enforcement program only if it enters into a memorandum of understanding (MOU) with the governing body of the political subdivision in which the law enforcement agency is located that describes the terms and conditions pursuant to which the agency will participate in the immigration enforcement program. The bill would authorize the MOU to take effect 30 days after ratification by the governing body, and would authorize the MOU to be valid for a period not exceeding 2 years. The bill would require the MOU and any records related to its development be public records for purposes of the California Public Records Act. The bill would require the local governing body to hold at least 3 community forums to provide information to the public about the policy under consideration, and to receive and consider public comment before entering into the MOU. The bill would require the MOU to require compliance with the TRUST Act, prohibit law enforcement responses to ICE notification or transfer requests except in those situations in which a law enforcement official would have discretion to detain an individual, requiring compliance with local ordinances or policies that limits law enforcement responses to ICE notifications, or detainer or transfer requests, prohibit execution of an ICE detainer or transfer request and a plan to ensure that ICE does not have access to individuals protected from continued detention on the basis of an immigration hold. By requiring these local agencies to comply with these requirements this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

~~*This bill would make nonsubstantive changes to those provisions.*~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) Transparency and accountability are essential
2 minimum requirements for any collaboration between state and
3 federal agencies.
4 (b) Recent immigration enforcement programs sponsored by
5 the federal Immigration and Customs Enforcement agency (ICE)
6 have suffered from a lack of transparency and accountability.
7 (c) For example, a federal judge found that ICE “went out of
8 [its] way to mislead the public about Secure Communities,” a
9 deportation program in which ICE collaborated with local law
10 enforcement agencies to identify people for deportation.
11 (d) The Legislature further found that Secure Communities
12 harmed community policing and shifted the burden of federal
13 immigration enforcement onto local law enforcement agencies.
14 (e) Although ICE has terminated the Secure Communities
15 program, it continues to promote a number of similar programs,
16 including the Priority Enforcement Program, the 287(g) Program,
17 and the Criminal Alien Program.
18 (f) The Priority Enforcement Program has many similarities to
19 Secure Communities, including the checking of fingerprints for
20 immigration purposes at the point of arrest; the continued use of
21 immigration detainers, which have been found by the courts to
22 pose constitutional concerns; and the reliance on local law
23 enforcement to assist in immigration enforcement.
24 (g) Just as with Secure Communities, numerous questions have
25 been raised about whether ICE has been transparent and
26 accountable with respect to its current deportation programs.
27 (h) This bill seeks to address the lack of transparency and
28 accountability by ensuring that all ICE deportation programs that
29 depend on entanglement with local law enforcement agencies in
30 California are subject to meaningful public oversight and meet
31 certain minimum standards.
32 SEC. 2. Chapter 17.2 (commencing with Section 7283) is added
33 to Division 7 of Title 1 of the Government Code, to read:

1
2 *CHAPTER 17.2. STANDARDS FOR PARTICIPATION IN UNITED*
3 *STATES IMMIGRATION AND CUSTOMS ENFORCEMENT PROGRAMS*
4

5 7283. For purposes of this chapter, the following terms have
6 the following meanings:

7 (a) “Detainer request” means a federal Immigration and
8 Customs Enforcement (ICE) request that a local law enforcement
9 agency maintain custody of an individual currently in its custody
10 beyond the time he or she would otherwise be eligible for release
11 in order to facilitate transfer to ICE and includes, but is not limited
12 to, Department of Homeland Security (DHS) Form I-247D.

13 (b) “ICE immigration enforcement program” means any
14 program through which the federal Immigration and Customs
15 Enforcement (ICE) agency works with local law enforcement
16 agencies to detect, detain, transfer, or share information about
17 individuals who allegedly are noncitizens or who have committed
18 civil immigration violations, or to station ICE agents in local jails,
19 and includes, but is not limited to, the Priority Enforcement
20 Program, the 287(g) Program, and the Criminal Alien Program.

21 (c) “Local law enforcement agency” means any agency of a
22 city, county, city and county, special district, or other political
23 subdivision of the state that is authorized to enforce criminal
24 statutes, regulations, or local ordinances; or to operate jails or
25 to maintain custody of individuals in jails; or to operate juvenile
26 detention facilities or to maintain custody of individuals in juvenile
27 detention facilities.

28 (d) “Notification request” means an Immigration and Customs
29 Enforcement request that a local law enforcement agency inform
30 ICE of the release date and time of an individual in its custody
31 and includes, but is not limited to, DHS Form I-247N.

32 (e) “Transfer request” means an Immigration and Customs
33 Enforcement request that a local law enforcement agency facilitate
34 the transfer of an individual in its custody to ICE, and includes,
35 but is not limited to, DHS Form I-247X.

36 7293.1. (a) A local law enforcement agency may participate
37 in a federal Immigration and Customs Enforcement (ICE)
38 immigration enforcement program only if the law enforcement
39 agency and the governing body of the political subdivision in which
40 the law enforcement agency is located enter into a memorandum

1 of understanding (MOU) that describes the terms and conditions
2 pursuant to which the local law enforcement agency will
3 participate in the immigration enforcement program. The MOU
4 shall only take effect 30 days after ratification of the MOU by vote
5 of the governing body of the political subdivision in which the law
6 enforcement agency is located.

7 (b) The MOU and any records related to the development of
8 the MOU, including, but not limited to, records of communication
9 with ICE, shall be public records for purposes of the California
10 Public Records Act (Chapter 3.5 (commencing with Section 6250)
11 of Division 7 of Title 1).

12 (c) An MOU enacted under this chapter shall be valid for a
13 period not exceeding two years. Renewal of an MOU requires
14 compliance with all of the provision of this chapter, including the
15 public input process described in subdivision (d) and an evaluation
16 of whether the conditions described in subdivision (e) have been
17 fully implemented. An MOU may be renewed for a period not
18 exceeding two years. An MOU may remain in effect for a period
19 of not exceeding six months following the two-year period if the
20 renewal process began at least three months before expiration of
21 the initial two-year period.

22 (d) Before entering into an MOU, the local governing body
23 shall hold at least three community forums that are open to the
24 public on different days, in accessible locations, and with at least
25 30 days notice to the public to provide information to the public
26 about the policy under consideration and to receive and consider
27 public comment. The community forums shall be held pursuant to
28 the Ralph M. Brown Act (Chapter 9 (commencing with Section
29 54950) of Part 1 of Division 2 of Title 5.

30 7293.2. (a) An MOU entered into pursuant to this chapter
31 shall include all of the following:

32 (1) A provision requiring compliance with Sections 7282 and
33 7282.5, commonly known as the TRUST Act.

34 (2) A prohibition on law enforcement responses to ICE
35 notification or transfer requests except in those situations in which
36 a law enforcement official would have discretion to detain an
37 individual on the basis of an immigration hold pursuant to Section
38 7282.5.

1 (3) A provision requiring compliance with any local ordinance
2 or policy that limits law enforcement responses to ICE
3 notifications, or detainer or transfer requests.

4 (4) A prohibition on executing an ICE detainer or transfer
5 request that does not indicate, in writing, whether the request is
6 supported by a judicial warrant.

7 (5) A plan to ensure that ICE does not have access to an
8 individual protected from continued detention under Section
9 7282.5, including, but not limited to, notification of the presence
10 of the individual in the custody of local law enforcement through
11 data sharing or otherwise, the ability to interview the individual,
12 and access to the personal identifying information, including work
13 or home addresses, of the individual.

14 (b) Unless otherwise prohibited by a local ordinance, law
15 enforcement policy, or an MOU entered into pursuant to this
16 chapter, nothing in this chapter shall prohibit a local law
17 enforcement agency from responding to an ICE notification or
18 transfer request if a law enforcement official would have discretion
19 to detain an individual on the basis of an immigration hold
20 pursuant to Section 7282.5.

21 SEC. 3. The Legislature finds and declares that Section 2 of
22 this act, which adds Chapter 17.2 (commencing with Section 7283)
23 to Division 7 of Title 1 of the Government Code, furthers, within
24 the meaning of paragraph (7) of subdivision (b) of Section 3 of
25 Article I of the California Constitution, the purposes of that
26 constitutional section as it relates to the right of public access to
27 the meetings of local public bodies or the writings of local public
28 officials and local agencies. Pursuant to paragraph (7) of
29 subdivision (b) of Section 3 of Article I of the California
30 Constitution, the Legislature makes the following findings:

31 By requiring public meetings relating to the manner in which
32 local law enforcement entities cooperate with federal authorities
33 in enforcing federal immigration laws and making related
34 documents open to public inspection this act furthers the purposes
35 of paragraph (7) of subdivision (b) of Section 3 of Article I of the
36 California Constitution.

37 SEC. 4. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district under this act would result from a legislative mandate that

1 *is within the scope of paragraph (7) of subdivision (b) of Section*
2 *3 of Article I of the California Constitution.*

3 ~~SECTION 1. Section 7282 of the Government Code is amended~~
4 ~~to read:~~

5 ~~7282. For purposes of this chapter, the following terms have~~
6 ~~the following meanings:~~

7 ~~(a) “Conviction” shall have the same meaning as subdivision~~
8 ~~(d) of Section 667 of the Penal Code.~~

9 ~~(b) “Eligible for release from custody” means that the individual~~
10 ~~may be released from custody because one of the following~~
11 ~~conditions has occurred:~~

12 ~~(1) All criminal charges against the individual have been~~
13 ~~dropped or dismissed.~~

14 ~~(2) The individual has been acquitted of all criminal charges~~
15 ~~filed against him or her.~~

16 ~~(3) The individual has served all the time required for his or her~~
17 ~~sentence.~~

18 ~~(4) The individual has posted a bond.~~

19 ~~(5) The individual is otherwise eligible for release under state~~
20 ~~or local law, or local policy.~~

21 ~~(c) “Immigration hold” means an immigration detainer issued~~
22 ~~by an authorized immigration officer, pursuant to Section 287.7~~
23 ~~of Title 8 of the Code of Federal Regulations, that requests that~~
24 ~~the law enforcement official maintain custody of the individual~~
25 ~~for a period not to exceed 48 hours, excluding Saturdays, Sundays,~~
26 ~~and holidays, and advise the authorized immigration officer prior~~
27 ~~to the release of that individual.~~

28 ~~(d) “Law enforcement official” means any local agency or~~
29 ~~officer of a local agency authorized to enforce criminal statutes,~~
30 ~~regulations, or local ordinances or to operate jails or to maintain~~
31 ~~custody of individuals in jails, and any person or local agency~~
32 ~~authorized to operate juvenile detention facilities or to maintain~~
33 ~~custody of individuals in juvenile detention facilities.~~

34 ~~(e) “Local agency” means any city, county, city and county,~~
35 ~~special district, or other political subdivision of the state.~~

36 ~~(f) “Serious felony” means any offense listed in subdivision (c)~~
37 ~~of Section 1192.7 of the Penal Code and any offense committed~~
38 ~~in another state that, if committed in California, would be~~
39 ~~punishable as a serious felony as defined by subdivision (c) of~~
40 ~~Section 1192.7 of the Penal Code.~~

1 (g) ~~“Violent felony” means any offense listed in subdivision (e)~~
2 ~~of Section 667.5 of the Penal Code and any offense committed in~~
3 ~~another state that, if committed in California, would be punishable~~
4 ~~as a violent felony as defined by subdivision (e) of Section 667.5~~
5 ~~of the Penal Code.~~

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